

APPLICATION FOR JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: Candyce Beumler Pardee
2. Have you ever used or been known by any other name? Yes If so, state name:
Candyce Collins Beumler
3. Office Address: 3555 E. Fry Boulevard, Sierra Vista, Arizona 85635
The main office is located at: 1138 N. Alma School Rd., Ste. 101, Mesa, AZ 85201
4. How long have you lived in Arizona? 64 What is your home zip code? 85635
5. Identify the county you reside in and the years of your residency. Cochise, 1 year
6. If appointed, will you be 30 years old before taking office? I will be over 30 years old before taking office

If appointed, will you be younger than age 65 at the time of appointment? YES
7. List your present and any former political party registrations and approximate dates of each: Democrat, 1972, Cochise County, AZ; Democrat, 1983, Gila County Arizona; Democrat, 2001, Cochise County, AZ; Democrat, 2010, Yuma County.

8. Gender: Female
Race/Ethnicity: White

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received. University of Arizona, 1972-1976, BA, English Education; University of Arizona, 1978-1981, JD.
10. List major and minor fields of study and extracurricular activities.
- Major: English Education
 - Minor: Government
 - Undergraduate Extracurricular Activities: Delta Zeta Sorority (chaplain, Lamp collegiate editor, Historian, Treasurer, Corresponding Secretary, President); Order of the Eastern Star; Kaydettes (auxiliary to Army ROTC) and Kaydette Drill Team (pledge trainer, vice president, basketball game hostess, Dean Martin Golf Open hostess, Volunteer Tucson Veterans' Hospital); Wranglers Student Health Center Volunteer; Exams Student Saver; Alpha Lambda Delta; Spurs; Chimes; Mortarboard (Freshman-Senior honoraries); Kappa Delta Pi (Education Women's Honorary); VD Hotline Volunteer; Dean's List; Panhellenic Rush counselor; Intramural Women's Flag Football; Utterback Junior High School tutor (part of experimental class at University of Arizona College of Education).
 - College of Law Extracurricular Activities: Order of Eastern Star; Reporter, Arizona Advocate student newspaper; University of Arizona Law Review (1979-1981); Law Women's Association; Criminal Law tutor.
11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.
- Undergraduate: Alpha Lambda Delta Freshman Women's Honorary; Spurs Sophomore Women's Honorary; Chimes Junior Women's Honorary; Mortarboard Senior Women's Honorary; Dean's List; Kappa Delta Pi; graduated with distinction.

- Worked summers as a part-time waitress (tips only) at the Portal restaurant, Portal, Arizona. Worked part-time (unpaid) during summers, vacations in parents' orchard in Portal, Arizona.
- Law school: Reporter for law school newspaper, "The Arizona Advocate," 1 year; Arizona Law Review, 2 years, published two articles: "Liability in Professional Sports: An Alternative to Violence," Vol. 22, Arizona Law Review, 919 (1980). "A New Dimension in Arizona Community Property Law," Vol. 22, Arizona Law Review, 131 (1980)
- Law clerk for Miller, Pitt & Feldman, Spring 1979; law clerk for U.S. Army Judge Advocate General Corps, Summer 1979; law clerk for Molloy, Jones, 1979-1981.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.
 - State Bar, State of Arizona, October 1981
 - Federal District Court, District of Arizona, November 1981.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No If so, explain. N/A

 b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? No If so, explain any circumstances that may have hindered your performance. N/A

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Non-shareholder Partner, Education Law Section Udall Shumway, P.L.C.	Apr. 1, 2009- Present	Yuma, AZ Sierra Vista, AZ
Deputy County Attorney, Cochise County	Jan. 2001- Apr. 1, 2009	Bisbee, AZ
Deputy County Attorney, Gila County	Sept. 1983- Dec. 2000	Globe, AZ
Burger, McReynolds & Beumler	Sept. 1982- Aug. 1983	Mesa, AZ
Division One Court of Appeals, Law Clerk for Hon. Eino Jacobson	1981-1982	Phoenix, AZ

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve. (Attached)
16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. Education Law 99.9 percent

If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench. N/A

17. List other areas of law in which you have practiced.
 Domestic relations during 1982-1983 while in private practice; criminal law (primarily as a prosecutor); administrative law (representing Gila County, then Cochise County, in the civil divisions of each); juvenile law: as a prosecutor and in representing parents in adoptions handled through the county (as a deputy county attorney in Gila and Cochise counties); mental health law (representing Gila and Cochise counties in Title 36 involuntary commitment hearings); election law (on behalf of Gila and Cochise Counties as a deputy county attorney and representing school districts in override election challenges); open meeting law (as a deputy county attorney for Gila and Cochise Counties and representing school districts charged with open meeting

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law violations); zoning law (representing Gila and Cochise County zoning departments and the County Boards of Supervisors while sitting as the Board of Zoning); I also represented the County Health Departments, Sheriff's Departments, Human Resources Departments, and County Library Districts. I represented the Gila County Hospital until it was sold. I served as the back-up attorney for Gila County child support enforcement actions.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. N/A

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

Over 50% of my work with school districts involves negotiating and drafting contracts – whether work contracts for the employees of the District, property use agreements, or service agreements. Less often, I negotiate and draft documents to memorialize an employee's termination agreement with the District. I also review and approve Contracts and Memorandums of Understanding/Agreement with non-governmental entities and Intergovernmental Agreements with other governmental agreements. When any contract fails to contain state mandated provisions, I would explain to often dubious parties why an addendum or an agreement to modify an agreement to include a missing provision is required. I have, on occasion, redrafted policies or regulations for the District to better tailor an Arizona School Boards Policy to the needs of a small, rural district. I also write formal opinions for Districts that are submitted to the Arizona Attorney General's office for a mandated review. One of these opinions resulted in the Attorney General correcting a stubbornly held misapprehension by the Auditor General's Office that was causing chaos in the payment of teachers and other exempt employees who were under annual contracts with the Districts.

20. Have you practiced in adversary proceedings before administrative boards or commissions? Yes. If so, state:

- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.
 - I appeared in one matter before the Federal Government Accountability Office (GAO) Procurement Law Division to protest an award of a bid (2009)
 - I have appeared before the Arizona Office of Administrative Hearings on two matters
 - I appeared before the Arizona Board of Contractors on one matter.

b. The approximate number of these matters in which you appeared as:

Sole Counsel: 3 (GAO; one Office of Administrative Hearing matter; Board of Contractors)

Chief Counsel: N/A

Associate Counsel: 1 (the second Office of Administrative Hearing matter)

21. Have you handled any matters that have been arbitrated or mediated? YES
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: I was sole counsel for my client, but co-counsel with two other attorneys representing separate individual clients in 1 matter, it was mediated on two separate occasions as the first mediation failed. I was sole counsel for 2 other mediations/arbitrations.

Chief Counsel: N/A

Associate Counsel: N/A

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

A. Ajo Unified School District v. Arizona Department of Education, Office of Administrative Hearings 10F-003-ADE

- 1) May 27, 2010-May 26, 2011
- 2) Hon. Thomas Shadden, Administrative Law Judge
- 3) Attorneys, Clients:
 - a) ADE: Carrie O'Brien and Chad Sampson (at the time, Office of the Attorney General, 1275 W. Washington, Phoenix, AZ 85007-2926, now, Chad Sampson is at Arizona Board of Regents, 2020 N. Central Ave., Ste. 230, Phoenix, AZ 85004, chad.sampson@azregents.edu, 602.229.2512; Carrie O'Brien is at Gust Rosenfeld, One Washington St. Ste 1600, Phoenix, AZ 85004, cobrien@gustlaw.com, 602.257.7422
 - b) Ajo Unified School District: Candyce Pardee, Udall Shumway, P.L.C., 3555 E. Fry Boulevard, Sierra Vista, AZ 85635, cbp@udallshumway.com; 520.678.3108.

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- 4) ADE claimed that Ajo Unified School District knowingly admitted children under open enrollment who resided with parents in Mexico without payment of tuition in violation of Arizona school funding. The District maintained that the parents provided Arizona addresses in the unincorporated territory under the jurisdiction of Pima County School Superintendent and were transported to the school on the Pima County School Superintendent's bus. The District should not be required to perform bed checks in the territory of another entity to verify that the children were actually spending each night with their parents at the Arizona addresses and not with their parents in Mexico.
- 5) The issue of substance was what was the responsibility of schools to determine the actual physical residence of students allegedly residing in another entity's jurisdiction. The second issue of substance was determining the amount of restitution the District owed ADE for Average Daily Membership (ADM) paid to the District by ADE for educating the children determined to be residents of Mexico.

23. Have you represented clients in litigation in Federal or state trial courts? Yes If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 1

State Courts of Record: More than 400 over the 20+ years I was a Deputy County Attorney in Gila and Cochise Counties

Municipal/Justice Courts: At least 50

The approximate percentage of those cases which have been:

Civil: Approximately 3 percent

Criminal: Approximately 97 percent

The approximate number of those cases in which you were:

Sole Counsel: Approximately 95 percent

Chief Counsel: Approximately 3 to 4 percent

Associate Counsel: Approximately 1 to 2 percent

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: I have responded to and argued against a number of these motions as a prosecutor; I have brought a few pretrial motions to enhance punishment, to preclude a defendant from inquiring into the chastity of a victim in a child molest or sexual assault case, or to secure testimony through a deposition for an out-of-state witness.

You argued a motion described above 100%

You made a contested court appearance (other than as set forth in the above response) 100%

You negotiated a settlement: Assuming this includes plea agreements in criminal and juvenile cases, approximately 85-90% of my criminal cases were settled by plea agreements. I negotiated settlements in three civil cases after early rulings in my clients' favor by the trial court.

The court rendered judgment after trial: At least 90 juvenile matters; 2 civil matters tried before a judge.

A jury rendered a verdict: At least 40-65 felony and misdemeanor criminal jury cases over 20+ years as a prosecutor in Gila and Cochise counties.

Disposition occurred prior to any verdict: I have had several cases settle after the contested matter began but before a verdict was reached. I can think of two such civil matters and at least one criminal case.

The number of cases you have taken to trial:

Limited jurisdiction court approximately 5

Superior court approximately 40 - 60

Federal district court 0

Jury approximately 40

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

I have contacted the Cochise County Clerk of Court Office and the Gila County Clerk of Court Office and neither has a method of determining these numbers.

24. Have you practiced in the Federal or state appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil: 3

Criminal: 0; I did respond to appeals in probably fewer than 10 juvenile adjudications.

Other: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief: AZ = 3 U.S. = 0

Personally in oral argument: AZ = 2 U.S. = 0

25. Have you served as a judicial law clerk or staff attorney to a court? Yes If so, identify the court, judge, and the dates of service and describe your role.

I was selected as Judge Eino Jacobson's law clerk from 1981-1982 in the Arizona Division 1 Court of Appeals. The Division 1 judges, at that time, assigned a case to the law clerk each week for the law clerk to review and provide a syllabus of the applicable laws. The law clerks were then permitted to attend the judges' meeting prior to the oral arguments to present their summaries of the cases and to hear the judges' summaries of other cases. The law clerks were expected to defend their opinions on the cases and how they believed the court should rule on the matter. The law clerks then took turns sitting as the bailiff during the oral arguments. Following the oral arguments, the judges would be assigned cases which would be written published opinions and cases which would not be selected for publication. The law clerks would also be given cases to research and write, which the judges would then review and amend, modify, request additional research and finally approve. Those cases and the cases the judges authored would then be circulated among the other judges (and their law clerks) for review and comment. Just prior to the start of my year, Judge Sandra Day O'Connor was tapped for the United States Supreme Court and Judge Sarah Grant was selected to replace her and Judge Laurance Wren was diagnosed with and died seemingly soon after of a brain tumor. This meant that Judge Jacobson's Department was short-handed

part of the time and relied upon Superior Court judges sitting in at times to supplement the panel. This allowed me to work with a number of other judges in addition to Judge Jacobson.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.
- A. Wenc v. Sierra Vista Unified School District No. 68, 210 Ariz. 183, 108 P.3d 962 (2005)
1. June 4-9, 2004-March 29, 2005
 2. Cochise County Superior Court, Hon. Stephen Desens; Arizona Court of Appeals, Div. 2, Hon. Peter Eckerstrom, Hon. Joseph Howard, Hon. Philip Espinosa concurring; Arizona Supreme Court (Petition for Review improvidently granted following oral argument, Petition Denied, Sept. 27, 2005).
 3. Attorneys, Clients:
 - a) Plaintiff: Mr. Anthony Wenc, pro se (Superior Court), 303 Mallard Circle W., Sierra Vista, AZ 85635 (phone number, email unknown);
Mr. Dan Davis, Represented Mr. Wenc in the Court of Appeals; Supreme Court. Mr. Davis is now deceased.
 - b) Defendant Sierra Vista Unified School District: Candyce Pardee (at the time, Cochise County Attorney's Office, now, Udall Shumway, P.L.C., 3555 E. Fry Boulevard, Sierra Vista, AZ 85635), cbp@udallshumway.com; 520.678.3108.
 - c) Ms. Anita Sanchez, Attorney for City of Douglas appointed as Special Deputy County Attorney on behalf of Cochise County Defendants (Board of Supervisors; Trudy Berry Cochise County School Superintendent; Thomas Schelling, Cochise County Elections). c/o City of Douglas, 425 Tenth Street, Douglas, AZ 85607-2030. Ms. Sanchez has retired and, according to the State Bar Directory, is at 6750 Bear Creek Dr., St. Louis, MO 63129, Asanchez629@gmail.com, 520.270.6291
 4. I prevailed in an election challenge at the trial court level and again at the Division 2 Court of Appeals. The challenge was brought by Mr. Wenc because the County School Superintendent Trudy Berry could not personally canvass the votes due to a family emergency. Her chief

deputy canvassed the votes in Ms. Berry's absence. Ms. Berry had not, however, filed a document in the County Recorder's Office designating Ms. Andrade as her deputy. The Plaintiff alleged the election must be set aside because the election canvass was not properly conducted.

5. The issue of substance was whether a technical violation of the canvass invalidated a properly conducted election; it did not.
 - B. Ajo Unified School District v. Arizona Department of Education, Office of Administrative Hearings 10F-003-ADE (See Question 24 for details).
 - C. State v. Van Wyck, S-0200-CR-200200748
 1. Sept. 27, 2002 to Sept. 27, 2002
 2. Hon. Wallace Hoggatt; Hon. Charles Irwin
 3. Attorneys, Clients:
 - a) State of Arizona: Candyce Pardee, (at the time, Cochise County Attorney's Office, now, Udall Shumway, P.L.C., 3555 E. Fry Boulevard, Sierra Vista, AZ 85635), cbp@udallshumway.com; 520.678.3108.
 - b) Defendant Van Wyck: Michael Farro, 4116 E. Avenida Cochise, Ste. E, Sierra Vista, AZ 85635, mefarro@farrolaw.com, 520.458.8494
 4. A burglary, theft case where young woman and her new boyfriend broke into the home of her former boyfriend's family, took a number of the father's personal military mementos as well as items of financial value. The new boyfriend took a plea and testified against her. She was convicted.
 5. There is no issue of substance other than that the young man who had been beguiled by the Plaintiff into participating in the burglary successfully completed probation. At his request, I petitioned the U.S. Marines to allow him to enlist despite the conviction, and he was eventually allowed to do so. He honorably served his country through several enlistments including 5 tours in Iraq and Afghanistan. I assisted him in having his civil rights restored in full including having the ability to carry arms restored to him. He is now retired from the military and attending school at Arizona State University. He married (not to Van Wyck) and has a son.
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27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

- I served as a member of a State Bar Professionalism tribunal while I was in Gila County, but I do not recall the dates on which I served on the professionalism committee, still less about the date of the tribunal—I believe that the Hon. Peter Cahill was the chairman of the committee. The attorney who was the subject of the disciplinary hearing did not show up to the hearing and had not responded to the allegations. I believe the tribunal recommended that the attorney be disbarred. I recall he later claimed he was disbarred based on the jealousy of other attorneys in the Phoenix area.
 - I have been appointed, and approved, as the arbitration hearing officer on three cases in Yuma County for the Yuma County Superior Court. Two of those were settled by the parties prior to arbitration. The third went to arbitration and I heard the matter involving injuries and damage to a vehicle because of a car accident. I awarded damages for the plaintiff.
 - I have been selected as a hearing officer in several school termination appeal hearings, but all settled prior to the hearing.
 - I was selected as a hearing officer in a community college termination appeal hearing, but it settled prior to hearing.
28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.
- Arbitration
- (1) April 29, 2015 to August 18, 2015
 - (2) Yuma County Superior Court, Compulsory Arbitration, pursuant to Compulsory Arbitration Rules of Civil Procedure.
 - (3) Counsel:
 - a. C. Candy Camarena, attorney for Plaintiff Carmargo Cornelius Candy Camarena, P.C.
217 S. 2nd Street
Yuma, AZ 85364
candy@camarenalaw.com
928.782.0550
 - b. Ms. Karla Starr, attorney for Defendant Holloway
Choate & Seletos
Mailing address:
P.O. Box 258829
Oklahoma City, OK 73125-8829

Physical address:
5255 W. Williams Circle, Ste. 6600
Tucson, AZ 85711
karla.starr@farmersinsurance.com
520.519.2453

- (4) This case involved a car accident with injuries and damage to the vehicle.
It was subject to compulsory arbitration.
 - (5) There was no particular significance to the case other than that this is the only arbitration over which I presided.
29. Describe any additional professional experience you would like to bring to the Governor's attention.

I have served as one of then Governor Fife Symington's appointments to a Juvenile Justice Commission beginning in 1987. The commission met frequently to determine what factors could be used as predictors of future criminal behaviors and it was made up of juvenile prosecutors and probation officers from all around the State. This commission used computer generated tracking of juvenile offenders after parents, parents' marital status, education, drug/alcohol abuse and economic factors making up the juvenile's environment were rated and considered. I found working in such a collaborative and focused group to be challenging and invigorating, and the results surprised all participants. I learned that the most closely and deeply held beliefs need to be reconsidered in light of new research and results.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? Yes If so, give details, including dates. I was an English and government teacher and girls' track coach at Agua Fria Union High School, Avondale, AZ prior to starting law school, 1976-1978.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? No If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service. N/A

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are appointed? N/A If not, explain your decision. It is not applicable.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? Yes If not, explain. N/A

33. Have you paid all state, federal and local taxes when due? Yes If not, explain. N/A

34. Are there currently any judgments or tax liens outstanding against you? No If so, explain. N/A

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No If so, explain. N/A

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? No If so, identify the nature of the case, your role, the court, and the ultimate disposition. N/A

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No If so, explain. N/A

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? No If so, explain. N/A

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No If so, provide details. N/A
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? No
If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition. N/A
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. N/A
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. N/A
43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. N/A
44. List and describe any sanctions imposed upon you by any court. N/A
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? No If so, in each case, state in detail the circumstances and the outcome. However, as a prosecutor, I apparently had some bar complaints filed against me which were found to be frivolous and were dismissed. All these were dismissed without requiring a response from me. I was requested to provide a response on 2 complaints. Those 2 were dismissed after I responded.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? N/A If your answer is "Yes," explain in detail. N/A
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? No If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action. N/A
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test. N/A
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties. N/A

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? Yes If so, list with the citations and dates.
- "Ten Tips for Contracting for a Successful School Resource Officer," National School Boards Association Council of School Attorneys, March-April *Inquiry & Analysis*, April, 2013.
 - "Time to Mentor," Arizona Attorney, March 2012.
 - "Liability in Professional Sports: An Alternative to Violence," Vol. 22, *Arizona Law Review*, 919 (1980).
 - "A New Dimension in Arizona Community Property Law," Vol. 22, *Arizona Law Review*, 131 (1980).

I also blog on the Udall Shumway web page. Some blogs I have written are "Sexting: Not Just Embarrassing, Criminal!"; "Dismissal Based on Classroom

Performance"; "The Wrath of the Open Meeting Law". My blogs, and those of other attorneys in the office, can be located at: <https://www.udallshumway.com/blog/category/blog>

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes If not, explain. N/A
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? Yes If so, describe.
 - Co-presenter with Jessica Sanchez and Cristan Cable (Arizona Auditor General) at the Arizona Association of Business Officials 2018 Conference
 - "Recruitment and Retention of Teachers During Teacher Shortages," Co-presenter with Phil Ortega, American Association of School Personnel Administrators (AASPA), Fall 2016
 - "Fair Labor Standards Act, 2014" Presenter for AASPA, Fall, 2014, Phoenix.
 - "Mentoring Secrets Revealed," Panelist at State Bar Convention, June 2013.
 - "It's All Rainbows, Love and Butterflies...As long as that @#!% doesn't get near MY kids...." Presenter for Yuma County Superior Court and Yuma County School Superintendents regarding the interaction between custody orders and schools, February 19, 2013.
 - "Duty to Report and Why You Want to Grow Up to Be a School Lawyer," Presenter at University of Arizona Rogers School of Law, February 6, 2013.
 - Presenter for Arizona State Bar webinar, November 13, 2012.
 - Presenter at Arizona School Administrator (ASA) conference, 2010.
 - Presenter at "Sizzlin' Summer" Conferences for Udall Shumway school clients, 2011-2018
 - Presenter at Arizona School Board Association Fall Law Conference since 2007.
 - I present at a number of client school districts for the "start of school" in-service days on Duty to Report, Sexual Harassment-Discrimination, and/or other topics like Bullying/Hazing, Educator Sexual Misconduct, Internet Use and Misuse, etc., as requested by the Superintendent. I also present on the Open Meeting Law, the Fair Labor Standards Act, and Board Member training for school boards.
53. List memberships and activities in professional organizations, including offices held and dates.

Arizona Bar Association, since 1981 (Mandatory membership)
Gila County Bar Association, 1983 to 2000; president 1986-1996.
Cochise County Bar Association, 2001 to 2010.
Yuma County Bar Association, 2010 to 2018

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? Yes

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

- Member, Arizona State Bar Mentor Committee (2009 to 2016)
- Arizona State Bar Continuing Legal Education Committee (1992-2011), Chair, 2009-2010
- Mock Court Regional Chairman, Gila County (1986-1999)
- Mock Court Coach, Buena High School, Sierra Vista Unified School District (2007-2009)
- Mock Court Coach, San Luis High School, Yuma Union High School District (2016-2017)
- State Bar Ethics Hearing Committee, sometime in 1980's or early '90's, I believe.
- President, Gila County Bar Association (1986-1996)

54. Describe the nature and dates of any relevant community or public service you have performed.

- Yuma Foothills Rotary Club (2010 to 2017); President for 2013-2014 club year; Youth Chair, 2014 to 2017, working with the Gila Ridge High School to select Students of the Month. Scholarships are awarded among those chosen as Students of the Month.
- Host family for Rotary exchange student from France, 2013-2014.
- Host family for law school student summer interns to the Yuma County Public Defender and Legal Defender offices, 2013 through 2016.
- Sierra Vista Rotary Club (2009-2010) (2018 to present)
- Miami Rotary Club (1989-2001).
- Camp Fire Boys and Girls Club leader (1995 to 2001).
- Member, Order of Eastern Star (Worthy Matron, White Mountain #8 in Globe, 1988-1989, 1992-1993, 1993-1994, 1994-1995, 1997-1998, 1999-2000, 2000-2001, 2001-2002)

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

Professional:

- Pinal-Gila Elder Abuse Specialist Team (EAST) Annual Service Award, 1999.
- Gila County Prosecutor of the Year, 1986-1987 and 1990-1991.
- Arizona State Bar Law Related Education Award, 1991 and 1995.

Civic honors, other forms of recognition:

- District 5500 Secretary, Rotary International, 2016-2017, 2017-2018, 2018-2019.
- Member, District 5500-District 3360 Friendship Exchange to Thailand, March 2017.
- Globe-Miami Chamber of Commerce Community Service Award, 2000-2001, along with David Pardee
- Odyssey Chapter American Business Women's Association's Woman of the Year, 1990.
- Grand Lecturer for the Grand Chapter of Arizona, Order of Eastern Star, 1996-1997.
- Grand Representative of Maine in Arizona, Order of Eastern Star, 2001 to 2003.
- Paul Harris Fellow, Rotary International, 1996, 2015, 2016.
- 1998 Fire Tender Award, Camp Fire Boys and Girls.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates. None

Have you ever been removed or resigned from office before your term expired?
N/A If so, explain. N/A

Have you voted in all general elections held during the last 10 years? Yes If not, explain. N/A

57. Describe any interests outside the practice of law that you would like to bring to the Governor's attention.

I enjoy participating in Rotary exchange programs, whether hosting individuals from different Rotary clubs around the world, hosting foreign exchange students, or traveling to other countries and staying with Rotary host families there, has been an amazing window into the world. I think the experience has made me more open as an individual. I have often found that what I have learned in one area, whether through travelling, reading, debating, hiking or whatever other path I may be on at one time or another, I have been able to apply those experiences to come up with solutions in other areas. Sometimes the young attorneys that I mentor tease me and call me "Cliff Clavin" after the character on Cheers who knew all sorts of meaningless trivia, because I can direct them down different avenues of inquiry because of something I've done at some other juncture in my life.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying?

Yes

ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

I am a female, over the age of 40, white, Methodist. I grew up in Douglas, AZ and since Douglas fully integrated its schools as soon as the Arizona legislature approved of local jurisdictions making that decision shortly after the Depression, I never knew that all Arizona schools were not fully integrated as well. It was a shock to move to Globe, AZ and discover that schools there weren't integrated until required to do so following Brown vs. Board of Education. My dad was an attorney, served in the Army reserve, served as Mayor of Douglas for 10 consecutive years, served on the Arizona Tourism Board, was a U.S. Commissioner (now referred to as a U.S. Magistrate) for a number of years, and became an English teacher at Douglas High School in addition to his law practice. My mother was a member of pretty much every service organization in town until I was in junior high, when she returned to teaching. I learned very early that service is an important way of life and I have, in my own life, followed that precept. I see being a Superior Court judge as another way of returning service to the community and the state.

60. Provide any additional information relative to your qualifications you would like to bring to the Governor's attention.

My husband of 30+ years and I have two children. Cassie is a consultant to Western Fisheries, is married to an enlisted man in the Coast Guard. She served for two years in the Peace Corps in the Philippines as a coastal management resource, establishing a coral reef protected area with her community and her Filipino counterpart. Adam entered the U.S. Navy as soon as he graduated from high school. He served as an enlisted man in the Nuclear program on the U.S.S. Enterprise. After 6 years, he returned to civilian life and is attending the University of Arizona on the G.I. Bill. I think the experience of being a parent has made me much more patient—but also far less susceptible to blandishments and promises and interesting versions of the truth. As a former prosecutor and present school law attorney, I am a strict adherent to following the law, whether or not I may personally agree with a particular law.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes If not, explain. I would not seek re-election at the end of the term for which I would be appointed.

62. Attach a brief statement explaining why you are seeking this position.

I would like to be appointed to fill the position vacated by the Honorable Karl Elledge as Cochise County Superior Court Judge because I believe I have a great deal to offer to the position. As an attorney who has practiced in both the criminal and civil arenas, I feel that I would be an asset to the Cochise County Superior Court by bringing a broad experience base to the bench. Although I have not been a judge myself, I have appeared before a number of judges in not only Gila and Cochise Counties, but also in Navajo, Apache, Pima, Santa Cruz, Pinal, Graham and Greenlee Counties when conflicts required that an attorney from one of the counties where I was a deputy county attorney handle a case in another county.

After all these years of practicing in front of so many different judges and with so many different attorneys, I believe that there are methods of cutting down on redundancy of status hearings and other time wasters for litigants, clients, and court staff. Saving time, in turn, saves money for the not only the clients, but for the County. As a prosecutor, and later as Chief Deputy in Gila County, I developed a number of time-saving procedures for getting disclosure and plea offers to defendants and their attorneys in order to triage at the earliest possible time which cases would be disposed of readily and which would be going to trial. I observed in turn which judges in the Superior Court could keep their calendars moving and which judges bogged down, slowing down the movement of cases through the system. I think that in using procedures as they were intended to be used to speed up the process, instead of as they are often actually to slow down the process, would be of great benefit to Cochise County. I also see the need to recognize the value of the attorneys' and litigants' time and to, therefore, be on time myself and to keep the court calendar moving.

In addition, I would like to become a Superior Court Judge because I see it as the next logical step for any practicing attorney. I have been an attorney for just over thirty years. In that time, I have worked as a sole practitioner, as a deputy county attorney, as a chief deputy county attorney, and as a member of a private law firm. I have been mentored by excellent judges and attorneys and I have, in turn, mentored other attorneys. Serving as a member of the judiciary would provide a new avenue of growth and experience.

In addition to my criminal prosecutorial experience in Gila County and Cochise County, I also served as a civil deputy county attorney. As such, I have been involved in representing the County Fiduciary, the Board of Supervisors, the County Treasurer, Elections Department, Health Department, County road crews,

Personnel, and other county agencies. I have handled involuntary mental health commitments from the County's position. Best by far, I have represented families in uncontested adoptions.

As an education attorney, I must research federal and state laws, administrative opinions, Arizona Administrative Code, policies, and Attorney General opinions in advising my clients. On occasion, I am requested to provide these same legal research skills on behalf of my clients when presenting a "request for an opinion" to the Arizona Attorney General's Office. These requests for opinions often form the basis for the Arizona Attorney General to interpret statutes that will then provide guidance to school districts across the state. A number of my opinions have either been adopted or have been subject to a "decline to review" by the Arizona Attorney General's Office.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.
64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. N/A

**LEGAL
WRITING
SAMPLE**

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

[REDACTED] (hereinafter “[REDACTED]”) hereby submits this Memorandum of Points and Authorities re: Residency.

MEMORANDUM OF POINTS AND AUTHORITIES RE: RESIDENCY

What is a “resident,” and if a child is, in fact, a resident of the District, does the failure of the school to maintain proof of residency at the time of the audit preclude the finder of fact from considering proof of residency in determining repayment of funds?

J. RESIDENCY

The definition of “resident” or “residency” for purposes of receiving a free public education in Arizona has been addressed in statute, Arizona case law and in Arizona Attorney General Opinions.

•

1 2. The place at which the registrant is a resident.

2 3. The county courthouse in the county in which the registrant resides.

3 4. A general delivery address for a post office covering the location where the
registrant is a resident.

4 According to A.R.S. §16-121.01(B), the presumption that a person is properly registered to vote
5 may only be rebutted by clear and convincing evidence. A.R.S. §15-1802 (G), describing how a
6 member of the armed forces can demonstrate in-state residency in order to attend an Arizona
7 community college provides the following:

8 2. Demonstrated objective evidence of intent to be a resident of Arizona which, for
9 the purposes of this section, includes at least one of the following:

10 (a) An Arizona driver license.

11 (b) Arizona motor vehicle registration.

12 (c) Employment history in Arizona.

13 (d) Arizona voter registration.

14 (e) Transfer of major banking services to Arizona.

15 (f) Change of permanent address on all pertinent records.

16 (g) Other materials of whatever kind or source relevant to domicile or residency
status.

17 3. Filed an Arizona income tax return with the department of revenue during the
18 previous tax year.

19 Similarly, A.R.S. §15-1802.01 (A)(4) provides that a student wishing to attend a community college
20 can prove residency by providing the college with any of the following:

21 (a) An income tax return.

22 (b) The place of graduation from high school.

23 (c) The source of financial support.

24 (d) Dependency as indicated on a federal income tax return.

25 (e) Ownership of real property.

26 (f) A notarized statement of a landlord or employer.

27 (g) Bank accounts.

28 Each of the above referenced statutes (as well as █ District Policy JFAB) requires that a

person claiming residency in Arizona have an intent to remain in Arizona. Yet there are no Arizona

1 statutes or State regulations that require school districts, the county recorder's office in the various
2 Arizona counties, or community colleges to conduct an independent investigation to initially verify
3 an individual's intent to remain in Arizona. There are no Arizona statutes or State regulations that
4 place an affirmative duty to verify each residence that the individuals claim. There are certainly no
5 Arizona statutes or State regulations that place an obligation on school districts, community
6 colleges, or the recorder's offices in the Arizona counties to go door to door to verify whether or not
7 an individual is actually living at the residence they claimed when applying to attend school or to
8 vote. Rather, the public entities at issue are entitled to accept proof of residency based on the
9 facially valid documents presented.

10 The Wade Church Attorney General Opinion of 1959 (Op. Atty. Gen. 59-146) is an opinion
11 without precedence or progeny. It attempted to require school boards to go to trailer parks to
12 establish if the individuals residing in the trailer park intend to remain in Arizona. A bit of history
13 demonstrates that this Opinion was written a mere five years after the groundbreaking decision in
14 Brown v. Board of Education, 347 U.S. 483 (1954) which determined that "separate" facilities
15 based on race were never "equal." The statute⁴ upon which the Attorney General Opinion relied in
16 the opinion, demonstrates some of the parochialism of that time. Although it is clear that residency
17 requires an intent to remain plus a physical presence, no method was established in the opinion as to
18 how the school board was go about visiting trailer parks to make the determination about whether
19 the occupants intended to remain in Arizona.
20
21

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23
24⁴ The 1959 version of A.R.S. § 15-821 cited in the Attorney General Opinion read:

- 25 ARS 15-302 Admission of pupils; residents' nonresidents' exclusion of certain children
26 A. All schools other than high schools and evening or night schools shall, unless otherwise provided by law, admit
27 children between the ages of six and twenty-one years who reside in the district.
28 B. The governing board may admit children who do not reside in the district but who reside within the state upon such
 terms as it prescribes.
 C. Children of nonresidents of the state may be admitted upon payment of a reasonable tuition fixed by the board.
 D. The board may exclude children of filthy or vicious habits or children suffering from contagious or infectious
 diseases.

1 Since this 1959 opinion, no case law, statute, Attorney General Opinion or State regulation
2 has held school districts or other public entities to the standard of having to go house to house,
3 trailer to trailer, to determine whether an individual is actually living in the residence they have
4 claimed and/or whether they have an intent to remain in Arizona.

5 The [REDACTED] District recognized that if a school district received credible
6 evidence that a specific individual does not live at the residence claimed, the district must take
7 action. For instance, when an individual does not follow through with securing guardianship within
8 the thirty days (as required by A.R.S. § 15-821(D)), the school district must take action to dis-enroll
9 the child or secure payment of tuition. The process of how this happens, however, is not set out in
10 statute, policy, case law, or the Arizona Administrative Code.

12 **III. DOES FAILURE TO HAVE FACIALLY VALID DOCUMENTATION IN STUDENT**
13 **FILES PRECLUDE THE FINDER OF FACT FROM REVIEWING THE**
14 **DOCUMENTATION SHOWING RESIDENCY?**

15 The Administrative Law Judge will recall that on October 5, 2010, Brian Lockerly testified
16 on behalf of the Arizona Department of Education (ADE). Mr. Lockerly testified under oath that
17 the State's auditors required the District to follow its own Policy regarding proof of residency.
18 (Transcript, hereinafter, TR, Oct. 5, 2010, page 95).

19 The Arizona Department of Education submitted copies of [REDACTED] Elementary and High
20 School procedures for admitting students to the tribunal. (TR, Oct. 5, 2010, pages 87-92.) Neither
21 procedure requires the District to place copies of the residency documentation in the files; only
22 copies of proof of identity/age (such as the birth certificate) are required to placed in the files.
23 Thus, the District was following its own Policy regarding proof of residency when it did not copy
24 and maintain residency documents in its files. The ADE should not be permitted to reject the
25 evidence of residency provided by Pima County or later produced evidence of residency provided
26 by [REDACTED]. The children at issue in this case reside in Arizona or they do not. The District's retention
27
28

1 of documentation or failure to retain such documentation does not change the reality of a child's
2 residency.

3 **RESPECTFULLY SUBMITTED** this 6th day of December, 2010

4 UDALL, SHUMWAY & LYONS, P.L.C.
5

6 By _____
7 CANDYCE B. PARDEE

8 Copy of the foregoing e-mailed on
9 December 6, 2010, to:

10 Carrie O'Brien
11 Office of the Attorney General
12 1275 W. Washington
13 Phoenix, AZ 85007-2926

14 By _____
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August 14, 2012



Re: Request for an Opinion on Requirements for Offering Annualized Pay

Dear [REDACTED]:

You requested an opinion regarding the District's responsibilities regarding employees' choice of annualized compensation and the legality of paying an employee past the end of the school's budget year.

A. The Law

Statutes:

A.R.S. §23-351 (C) (2) states:

In the case of employees of school districts or of the Arizona state school for the deaf and the blind, the annual salary may be prorated in any number of payments, and the employee may select whether to have the salary prorated or paid during the actual months worked. If the employee's salary is prorated, all such payments still due at the close of the school attendance year or fiscal year may at the option of the employee be paid in either a lump sum or paid within a period of two months after the close of the fiscal year.

Emphasis added.

Attorney General Opinions:

Op. Atty. Gen. I89-050 (R89-056), in discussing withholding child support from a teacher's final balloon payment at the end of the year, stated, "A.R.S. § 23-351(B) (2) allows school districts to prorate their employees' annual salaries; it also allows school district employees who select proration to receive payments due at the close of the school year in one lump sum. The school districts and their employees may contract the number of payments to be selected. Ariz. Att'y.Gen.Op. I61-033."

Op. Atty. Gen. I04-007 (R04-018) expanded the ability of salaried as well as hourly employees to choose the method of annualized pay. The Opinion stated all

“school district employees, regardless whether their wages are computed by the hour or on a yearly basis... may request that that their compensation be paid over the actual months worked or be prorated in any number of payments as set forth in A.R.S. § 23-351(C) (2).”

IRS Notice 2008-62, 2008 IRB

The Internal Revenue Service (“IRS”) issued IRS Notice 2008-62, 2008-29 IRB (“IRS Notice”) wherein it has indicated that under most arrangements for public school teachers and employees under which they are permitted to annualize school-year compensation, whether or not they are allowed individual elections, such compensation will be excluded from deferred compensation coverage. Taxpayers are entitled to rely on the guidance provided in the Notice immediately.

The IRS Notice describes a rule that the Treasury Department and the IRS anticipate will be included in regulations to be proposed under Internal Revenue Code § 457(f) to address certain type of arrangements involving recurring part-year compensation, including common arrangements involving public school employees who provide services during a 10-months school year and elect to be paid ratably over 12 months. In most cases the compensation received in the subsequent school year for services rendered in the prior school year will not been deemed deferred compensation under an ineligible 457(f) plan which would normally require the deferred compensation to be included in the participant’s gross income in the first taxable year, that is the year in which services are rendered.

The Federal Tax Coordinator¹ quoted and summarized portions of the IRS Notice as follows:

An arrangement in which an employee or independent contract receives recurring part-year compensation does *not* provide for deferred compensation for purposes of Code Sec. 457(f) if the arrangement does not:

- (1) defer payment of any of the recurring part-year compensation beyond the last day of the 13th month following the beginning of the service period; and
- (2) defer from one taxable year to the next taxable year the payment of more than the applicable dollar amount under Code Sec. 402 (g) (1) (B) ($\text{¶H-}9151$) in effect for the calendar year in which the service period begins.

Illustration 1: A school district employee works during a school year that begins on Aug.1, 2008 and ends on May 31, 2009 (a ten-month school year). The employee is paid over the 12-month period beginning Aug. 1, 2008 (either because the school system pays over a 12-month period or because the employee may elect to be paid over the 12-month period and has made the

¹ Federal Tax Coordinator 2d, $\text{¶H-}3307.1$ Arrangements for recurring part-year compensation that are not treated as ineligible Code Sec. 457 plans.

election). The arrangement does not provide for deferred compensation for Code Sec. 457 (f) purposes unless the employee earns more than \$186,000 for the school year.”

B. Opinion

As you know, in July of this year, I informed the superintendents of the Districts that I represent, [REDACTED] being among them, that it was up to the districts as to whether or not it wished to offer its employees the opportunity to prorate their salaries or hourly income. If the district chose to give employees the chance to prorate their pay, however, then, according to A.R.S. §23-351 (C) (2) and the Attorney General Opinions cited above, the employees must be given the choice between whether they wished to be paid “either a lump sum or paid within a period of two months after the close of the fiscal year.”

The [REDACTED] Elementary School business manager quite correctly pointed out that employees whose contract began with the first day of school in the middle of August could not be given pay checks prior to beginning work. When it was explained that the additional 5 pays to create 26 pays occurred following the end of the contract, the [REDACTED] business manager was concerned that this would cause payments to be made after the close of the fiscal year. Again, A.R.S. §23-351 (C) (2) provided the legal answer by stating that the pay could be “paid within a period of two months after the close of the fiscal year.” The Legislature, then, provided the legal right in this instance to continue to make payments of funds encumbered, and earned, under the school’s budget in one fiscal year, to teachers for the two month period following the end of the fiscal year, if the employee chose that method of receiving pay.

In an e-mail dated August 2, 2012, your District and [REDACTED], along with all the other public school districts in La Paz County, received an e-mail from Ms. Shelly Rohde, La Paz County Service Agency, stating the following:

It has come to our attention that this statute is being interpreted several different ways based on each person perspective and responsibilities. I took the time yesterday to speak with Amanda at the Auditor General's office, the Internal Revenue Service, Arizona State Retirement and finally and thankfully, the man who brought all of this information together for me Mr. Pete Skylar, Payroll Director of Scottsdale Union District.

Here is the information.

1. *The statute reads that you MAY offer the 26 pays, not that you MUST. It is up to the district.*
2. *There is a way to reduce the tax liability on balloon payments that has not been utilized at La Paz County School Districts. When you set up the work calendar in Enterprise on the front in the middle of the screen it asks what Pay Period is the balloon payment going to be*

paid, you then have the option to tell visions how many pay periods are encompassed. The system will then treat the balloon pay as that many individual checks for tax purposes. If you need help with this or further assistance, please give me a call.

3. *If you run a previous fiscal year payroll after June 30th, you will pay a penalty with Arizona State Retirement. No school district has done this for any longer than two weeks beyond the fiscal year and then it was only for Administrators and classified 12 month employees.*
4. *A Teachers contract is set up on a fiscal year, so will never have money that is actually due to the teacher after June 30, 2012. The only way that I could imagine being able to pay a teacher up to 8 weeks after the end of the fiscal year, would be to do four pays ending June 30, i.e. 26.1, 26.2, 26.3 and 26.4. All taxes and retirement would be processed by June 30th leaving only the teacher compensation portion not distributed. There are several problems with this that Mr. Skylar stated and the IRS verified. This is called a constructive payment issue, there is no way to alter the dates of these payments, therefore by doing this you are holding an employees pay beyond when it should have been paid. Along with being illegal, I believe that there would be a large liability issue with The Trust (I did not have a chance to speak to them).*
5. *Lastly, Amanda at the Auditor General's office simply stated that she knew school districts did but did not know how they were doing it.*

In conclusion, based on all of the governing entities involved, there is no way to legally accomplish paying a teacher 8 weeks beyond the fiscal year that we could find. If you process a payroll past the fiscal year end, ASRS will penalize you. If you hold compensation due to a teacher by June 30 for up to an additional eight weeks the IRS will fine you.

If you have legal counsel issuing contracts with this option, Mr. Sklar feels that you should be sure to get the direction in writing with no ambiguous language. Additionally if the County performs your payroll functions for you, processing taxes, ACH, ASRS, we would need to get a copy of that letter and have the La Paz County Attorney review prior to processing a payroll 8 weeks past a fiscal year.

After receiving this e-mail from the La Paz County Service Agency, you were rightly concerned, particularly with the conclusions that there “is no way to legally accomplish paying a teacher 8 weeks beyond the fiscal year” and that if you did so, “ASRS will penalize you.”

As indicated above, the Arizona legislature created the right for employees to request to be paid twenty-six pays which, by Arizona law, would be paid for the two months following the end of the fiscal year. The law specifically states that if a school district chooses to prorate salaries, then the employee has the option to determine whether

wages or salary paid to the employee shall be in twenty-one pays during the actual term of employment; twenty-one pays plus a balloon payment equal to five additional pays on the last pay period of the school year; or in twenty-six equal pays, extending for the two months beyond the end of the fiscal year just as if the employee were a twelve month employee. The Arizona State Retirement System should not be able to penalize a District for acting in compliance with the law.

The IRS Notice cited above demonstrates that in most circumstances there will be no federal tax issue for school districts or their employees should an employee choose to be paid over twelve months rather than have a payment with a balloon payment on the last payday of the school year or only be paid during the school year. The employee will continue to make the written election as to whether the employee wishes to have any portion of his/her pay annualized, and if so, which annualization option the employee wishes to have utilized.

I am, therefore, advising you to continue to comply with the law regardless of the advice to the contrary provided by the La Paz County Service Agency.

This opinion is being forwarded to the Attorney General for review pursuant to A.R.S. §§ 15-253 and 15-381. If the Attorney General does not concur, revise or decline to review this opinion within sixty days of its receipt, the opinion shall be deemed affirmed. As provided in A.R.S. § 15-381, governing board members shall have no liability for acts done in reliance upon written opinions of the Attorney General or upon written opinions of the Board's attorney which are deemed affirmed or declined for review by the Attorney General or with which the Attorney General concurs or as revised by the Attorney General. If you have any questions or concerns, do not hesitate to contact me.

Sincerely,

Candyce B. Pardee
Udall, Shumway & Lyons

CC: The Hon. Tom Horne
Arizona Attorney General

Ms. Shelly Rhode
La Paz County Service Agency

ARBITRATION WRITING SAMPLE

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1-800-863-6718 Toll-free
cbp@udallshumway.com

**IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA**

9 [REDACTED],)
10 Plaintiff) No. S1400 CV 201401055
11 vs.) DECISION OF ARBITRATOR AND AWARD
12 [REDACTED], et. al.,) OF MONETARY DAMAGES
13 Defendants.)
14)
15)

This Matter, set for arbitration on August 17, 2015, was heard in front of the undersigned arbitrator.

19 Mr. C. Candy Camarena was present with the Plaintiff, [REDACTED].
20 Ms. Karla Starr appeared without the Defendant. Mr. Camarena and Ms. Starr agreed that the
21 documents submitted, consisting of the police report, the photographs of the accident, the medical
22 records, and the medical bills would be admitted.

23 was sworn and testified under both direct and cross examination

After having read all the documentation submitted by the Parties, having heard the testimony, and having considered the arguments of the Parties, I issue the following findings and a monetary award pursuant to Rules of Civ. Proc., Rule 76:

1 I find that the sum of \$3,340.00 is appropriate for the medical bills expended on [REDACTED]
2 [REDACTED] behalf to date.

3 I further find that the amount of \$5,000.00 is reasonable for [REDACTED] pain and
4 suffering through two months of chiropractic treatment while he continued to work as a clerk at the
5 AM-PM Mini-Market, for his anxiety already experienced and for the pain and anxiety reasonably
6 probable to continue to be experienced in the future and which, in fact, continued after chiropractic
7 care ended and which still continues to date.

8 Although [REDACTED] failed to seek additional chiropractic treatment for his
9 continuing back weakness and pain or to undergo mental health treatment for anxiety brought about
10 when another car is following too closely, I find by a preponderance of the evidence that the pain
11 and the anxiety are real and continuing and should be compensated. For this reason I find that the
12 amount of \$1,000.00 for the first month of treatment and \$500.00 for the second month of treatment
13 suggested by the Defendant to be inadequate.

14 I therefore find that the Plaintiff should be awarded the total sum of \$8,340.00
15 (\$3,340.00 for reimbursement for chiropractic expenses and \$5,000.00 for pain and suffering).

16 **RESPECTFULLY SUBMITTED** this _____ day of August, 2010

17 UDALL SHUMWAY, P.L.C.
18

19 By _____
20 CANDYCE B. PARDEE
21

22 Copy of the foregoing emailed on
23 August 17, 2015, hard-copies to follow, to:
24

25 Mr. C. Candy Camarena
Cornelius Candy Camarena, P.C.
26 Attorney for Plaintiff [REDACTED]
27 217 S. 2nd Street
Yuma, AZ 85364
candy@camarenalaw.com
28

1 Ms. Karla Starr
2 **Choate & Seletos**
3 Attorney for Defendant [REDACTED]
P.O. Box 258829
Oklahoma City, OK 73125-8829
Karla.starr@farmersinsurance.com
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6 By _____
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